

FITZGERALD KNAIER LLP
 Kenneth M. Fitzgerald, Esq. (SBN: 142505)
 kfitzgerald@fitzgeraldknaier.com
 David M. Beckwith, Esq. (SBN: 125130)
 dbeckwith@fitzgeraldknaier.com
 Keith M. Cochran, Esq. (SBN: 254346)
 kcochran@fitzgeraldknaier.com
 402 West Broadway, Suite 1400
 San Diego, California 92101
 Tel: (619) 241-4810
 Fax: (619) 955-5318

WARREN LEX LLP
 Matthew S. Warren, Esq. (SBN: 230565)
 16-463@cases.warrenlex.com
 Patrick M. Shields, Esq. (SBN: 204739)
 16-463@cases.warrenlex.com
 2261 Market Street, No. 606
 San Francisco, California 94114
 Tel: (415) 895-2940
 Fax: (415) 895-2964

Attorneys for Plaintiff and Counter Defendant ViaSat, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ViaSat, Inc.,
a Delaware corporation,

Plaintiff
 and Counter Defendant,

v.

Acacia Communications, Inc.,
a Delaware corporation,

Defendant
 and Counter Claimant,

) Case No.: 3:16-cv-00463-BEN-JMA
)
) **Plaintiff ViaSat, Inc.’s *Ex Parte***
) **Application for Clarification or in the**
) **Alternative Reconsideration re:**
) **Sealing of Documents Containing**
) **Trade Secrets Pursuant to Local Rule**
) **7.1(i)**
)
) Dist. Judge: Hon. Roger T. Benitez
) Hon. Magistrate Jan M. Adler
)
) Case Initiated: January 21, 2016

I. Introduction

Plaintiff and Counter Defendant ViaSat, Inc. (“Viasat”) hereby moves *ex parte* for clarification, or in the alternative reconsideration, regarding the sealing of documents containing Viasat’s trade secret disclosures in this action pursuant to the Court’s order (Doc. No. 186). Plaintiff moves *ex parte* in order to avoid any delay in the finalization of the public record in connection with the parties’ pending motions and the Court’s anticipated rulings.

This is a trade secret case. In making and opposing summary judgment and *Daubert* motions, the parties rely upon expert reports that include Viasat’s identified trade secrets in this action. Specifically, Viasat’s technical expert, Dr. Narayanan, describes the seven specific Viasat trade secrets in section 13 of his expert report entitled “Review of Trade Secrets” (Doc. No. 178-2, Ex. L, p. 1454-1560). This section repeats *verbatim* the Viasat’s trade secret disclosures of the seven Viasat trade secrets and how those seven trade secrets apply to Acacia’s products. *Id.* The Fitzgerald declaration explains that this information discloses and discusses the Viasat trade secrets at issue in this action. Doc. No. 178-2 at ¶13. The Viasat trade secret disclosure of these seven trade secrets was designated as “Highly Confidential-Attorney’s Eyes Only” under the protective order when it was produced in discovery. Beckwith Declaration, ¶2. The expert reports containing the analysis of these seven Viasat trade secrets were also designated “Highly Confidential-Attorney’s Eyes Only”. *Id.* Notably, Acacia did not disagree, raising no objection to the sealing of this information as part of the motion to seal. *Id.* In fact, Acacia redacted 79 of the figures contained in this section that show implementations of the seven Viasat trade secrets.

Likewise, the Expert reports of Mr. Prowse (Doc. No. 178-2, Ex. N, p. 1818-1819) and Mr. Bersin. (Doc. No. 178-2, Ex. O, p.1894-1897) include detailed discussion of the seven identified Viasat’s trade secrets. These expert reports were also designated “Highly Confidential-Attorney’s Eyes Only” under the protective

1 order. Beckwith Declaration ¶3. The Fitzgerald declaration explains that this
2 information discloses and discusses the Viasat trade secrets at issue in this action.
3 Doc. No. 178-2 at ¶15-16. As with the Narayanan report, Acacia raised no objection
4 to the sealing of this trade secret information. (“Acacia takes no position on the
5 redactions that Viasat proposes for the Prowse Report...the Bersin Report...”).

6 It is unclear from the Court’s July 24, 2018 order (Doc. No. 186) whether the
7 Court intended the redactions to sealed exhibits relating to Dr. Narayanan, Mr.
8 Prowse and Mr. Bersin to include the additional redactions added by Viasat to
9 protect these Viasat trade secrets from public disclosure. The Order grants, inter
10 alia, the request to file redacted copies of the expert reports of Professor Krishna
11 Narayanan, Stephen Prowse and Brent Bersin. The Court order does not indicate if
12 the redacted versions of the reports should include the additional redactions that
13 were submitted by Viasat (and which Acacia did not oppose). Clarification is
14 therefore necessary, since the additional redactions that were identified by Viasat
15 clearly disclose the seven Viasat trade secrets at issue in this action. Beckwith
16 Declaration ¶3. Viasat therefore believes the Court’s order is correctly understood
17 to request sealing of these reports as further redacted by Viasat; if Viasat is incorrect,
18 Viasat respectfully requests reconsideration, as it would be clear error to require the
19 filing of Viasat’s trade secrets that are directly at issue in this action.

20 For the reasons set forth herein, ViaSat respectfully requests the Court to
21 clarify its Order concerning the requested redactions of Dr. Narayanan to include all
22 of the requested redactions of the Viasat trade secrets, and the analysis and
23 discussion of how those seven trade secrets apply to the Acacia products as set forth
24 in Doc. No. 178-2, Ex. L pages 1454-1560 and the additional redactions of Mr.
25 Prowse and Mr. Bersin, Doc. No. 178-2 Ex. O, p. 1894-1897 and Doc. No. 178-2,
26 Ex. N, p.1818-1819, respectively.

II. Argument

Viasat's summary judgment and *Daubert* motions rely on portions of expert reports that contain disclosures of the seven Viasat trade secrets, and a detailed analysis of how those trade secrets are used by Acacia. Viasat therefore sought to file those portions of the exhibits containing the trade secrets in a redacted form, and to ensure that when Acacia filed those expert reports under seal the portions of those reports containing Viasat trade secrets were properly redacted. The Fitzgerald declaration submitted in support of Viasat's response to Acacia's motion to seal (Doc. No. 178-2), expressly identified the additional information in the Narayanan, Bersin and Prowse reports as describing the Viasat trade secrets. (Doc. No. 178-2 ¶¶13, 15-16).

Pursuant to Civil Local Rule 7.1(i)(1), a party may apply for reconsideration "[w]henever any motion or any application or petition for any order or other relief has been made to any judge and has been refused in whole or in part" CivLR 7.1(i)(1); see also *United States v. Martin*, 226 F.3d 1042, 1049 (9th Cir. 2000) (explaining that where reconsideration of a non-final order is sought, the district court has inherent jurisdiction to modify, alter, or revoke its earlier ruling). Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "Clear error occurs when the 'reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.'" *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013). The Court "has the inherent power to reconsider and modify its interlocutory orders prior to the entry of judgment." *Saroli v. Agua Caliente Band of Cahuilla Indians* 2011 WL 2433089 (S.D. Cal. 2001); *Smith v. Massachusetts*, 543 U.S. 462, 475 (2005). This inherent power extends to prior rulings in the same litigation. *Labiri v. Universal Music & Video Distrib. Corp.*, 606 F.3d 1216,

1 1222 (9th Cir.2010) (“a court may revisit prior decisions in a case and correct errors
 2 while the case is still pending”). Here, the Court order granting in-part and denying
 3 in-part the renewed motion to file under seal does not indicate if the redacted
 4 versions of the reports should include the additional redactions that were submitted
 5 by Viasat (which were not opposed by Acacia). The Court may have overlooked the
 6 additional redactions to the Narayanan, Prowse and Bersin exhibits, or committed
 7 clear error in not permitting the redaction of the materials clearly identified as the
 8 Viasat trade secrets in those expert reports (and to which Acacia did not object to
 9 such redactions).

10 The request to seal these portions of the expert reports was supported by a
 11 declaration explaining that this information discloses and discusses Viasat trade
 12 secrets. Fitzgerald Declaration, Doc. No. 178-2 at ¶13, 15-16. The portions of the
 13 expert reports were highlighted and clearly identified as relating to a disclosure and
 14 analysis of Viasat’s trade secrets. Section 13 of the Narayanan report is titled
 15 “Review of Trade Secrets” and includes exact copies of the Viasat’s trade secret
 16 disclosures. *See e.g.* Doc. No. 178-2, Ex. L, p. 1454, 1471, 1490, 1509, 1525, 1538,
 17 1552. After each disclosure of Viasat’s seven trade secrets, there is detailed analysis
 18 of those trade secrets and how they apply to the Acacia products. *Id.* Acacia did not
 19 object to any of these proposed redactions, and in fact itself redacted virtually every
 20 single figure of Acacia materials contained in this section (79 block redactions) that
 21 described the application of the Viasat trade secrets to the Acacia product.

22 **III. Conclusion**

23 For the foregoing reasons, ViaSat respectfully requests the Court to clarify
 24 that the redactions of Dr. Narayanan expert report shall include all of the requested
 25 redactions of the Viasat trade secrets set forth in Doc. No. 178-2, Ex. L pages 1454-
 26 1560 and the additional redactions of Mr. Prowse and Mr. Bersin (Doc. No. 178-2,
 27 Ex. O, p. 1894-1897 and Doc. No. 178-2, Ex. N, p.1818-1819, respectively), which
 28 also set forth the Viasat trade secrets.

1 Dated: July 27, 2018

FITZGERALD KNAIER LLP

2
3 By: 

Kenneth M. Fitzgerald, Esq.

4 David M. Beckwith, Esq.

5 Keith M. Cochran, Esq.

6 -and-

7
8 WARREN LEX LLP

9 Matthew S. Warren, Esq.

10 Patrick M. Shields, Esq.

11 Attorneys for Plaintiff and Counter
12 Defendant ViaSat, Inc.

CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that, to the extent they are not registered CM/ECF Users, I am causing the foregoing document to be served by electronic means via email upon counsel for Acacia Communications, Inc., per the agreement of counsel.

Dated: July 27, 2018



David M. Beckwith, Esq.